IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 5778 OF 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MANSURALI ABDULHUSEN PARAWALA & ANR. - Petitioner(s)
Versus
DY. COLLECTOR & ORS. - Respondent(s)

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Appearance :
SHRI D.F. AMIN for Petitioner(s) : 1 - 2.
SHRI A.Y. KOGJE, AGP for Respondent(s) : 1.
SHRI J.T. TRIVEDI for Respondent(s) : 2 – 4 .
RULE SERVED for Respondent(s) : 5 - 6.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/02/2007

ORAL JUDGMENT

1. The petition has a little chequered history and some confusing facts, therefore, the wrinkles are required to be creased out.

The facts necessary for disposal of the present petition are that one Vestabhai Bhojabhai, husband of deceased respondent No.2 and father of respondent Nos.3 and 4, owned and possessed Survey No.25 admeasuring 0.24 Gunthas of land (new tenure) and Survey No.23/2/1 and Survey No.23/2/2 jointly admeasuring 0.22 Gunthas. One Jainuddin entered into an agreement to purchase the land and showed his inclination to purchase Survey No.25 admeasuring 0.24 Gunthas. The deceased Vestabhai Bhojabhai, having agreed to sell the land, moved an application for non-agricultural permission and transfer of the land. It appears and as is alleged that in the application, instead of Survey No.25, details of Survey Nos.23/2/1 and 23/2/2 were given. However, a detailed plan as sketch of Survey No.25 admeasuring 0.24 Gunthas was attached/annexed with the application seeking permission.

1.1 After hearing the parties and considering the pros and cons, the Competent Authority granted permission in favour of Vestabhai Bhojabhai to transfer Survey Nos.23/2/1 and 23/2/2 admeasuring 0.22 Gunthas, the details of which were mentioned in the application. However, nobody knew that either the details given in the application were wrong or the plan attached with the said application was of different land. After obtaining the permission, said Vestabhai Bhojabhai transferred the land in favour of Jainuddin. Though the Sale Deed was for Survey Nos.23/2/1 and 23/2/2, but, undisputedly and as agreed

between the petitioners and successors of Vestabhai, the possession of Survey No.25 was handed over to the said Jainuddin. It is also undisputed before me that since after execution of the Sale Deed, Survey Nos.23/2/1 and 23/2/2 remained in possession of Vestabhai, over which he had his residential house and some other construction. After some time, said Jainuddin transferred the said property in favour of the present petitioners.

1.2 It appears that because of transfer of the land, certain proceedings of breach of conditions were started against the petitioners. They appeared before the authority and submitted that in fact, the intention of the parties was to sell/purchase Survey No.25, but, unfortunately, the details of Survey Nos.23/2/1 and 23/2/2 were mentioned in the application.

1.3 During the pendency of the proceedings before the Collector, the proceedings under Section 73 of the Bombay Land Revenue Code also commenced. The said Mamlatdar submitted his report dated 15th November, 1985 to the Collector - Panchmahal, Godhra wherein he made a specific mention that the parties, in fact, were agreeable to transfer Survey No.25 and possession of Survey No.25 was given to Jainuddin, but, due to some mistake permission for transfer of Survey Nos.23/2/1 and 23/2/2 was applied for. However, the

authorities found that the petitioners were not entitled to convert the use of the land of Survey No.25 and as he had committed breach of the conditions, the petitioners were liable to be evicted and the land was to be forfeited in favour of the Government. The said orders were challenged before the higher authorities, but, as the petitioners could not get any solace from any quarter, they have filed the present Writ Application.

2. Shri Amin, learned Counsel for the petitioners, submits that from the intention of the parties and the report of the Mamlatdar, it would clearly appear that the intention of the parties was to transfer Survey No.25 and that there was a *bona fide* factual mistake in mentioning Survey Nos.23/2/1 and 23/2/2 in the application seeking permission. He submits that the authorities went by less appreciating that what was the real intention of the parties. He also submits that present is a case where the petitioners being the subsequent purchasers and respondent Nos.2 to 4 being the successors of the deceased Vestabhai Bhojabhai, should be allowed to make an application to the Competent Authority to convert the permission from Survey Nos.23/2/1 and 23/2/2 into Survey No.25. It is also submitted by Shri Amin that present is a case where the equity is in favour of the petitioners because if they are to be dispossessed from Survey No.25 and possession of Survey Nos.23/2/1 and 23/2/2 is not given to the petitioners, then, they

will be losing the possession on one side and would be losing money on the other.

3. Shri Trivedi, learned Counsel for the legal representatives of respondent No.2 and respondent Nos.3 and 4, submitted that permission in relation to Survey Nos.23/2/1 and 23/2/2 was sought , but, in fact, plan of land of Survey No.25 was annexed with the application and the real intention of Vestabhai Bhojabhai was to transfer Survey No.25. He submits that after execution of the first Sale Deed, the possession of Survey No.25 was given to Jainuddin, who, after transferring the land in favour of the petitioners, handed over the possession of Survey No.25 in favour of the present petitioners. He submits that if present is a case of *bona fide* factual mistake or a case of mistake on facts, then, the parties should be allowed to rectify the mistake with liberty in their favour to make an application either for amendment of the first application seeking permission or in the alternative, to make an application afresh bringing to the notice of the authorities that really, what factual mistake occurred and why it is required to be corrected.

4. Shri A.Y. Kogje, learned Assistant Government Pleader for the respondent-State, submits that from the records, it appears that there was some confusion on facts because permission for a particular Survey Number was sought, while the plan of another Survey Number was

annexed. He submits that the authorities went by the application and in a case like the present, they were not required to look into the plan, which was annexed with the application. He, however, submits that the petitioners are in possession of Survey No.25, while respondent Nos.2, 3 and 4 are in possession of Survey No.23/2/1 and Survey No.23/2/2.

5. So far as the factual dispute relating to Survey Numbers and annexing of the plan with the application is concerned, the same is not a dispute between the parties, who claim through Jainuddin, and respondent Nos.2, 3 and 4, who claim through Vestabhai Bhojabhai. The State Government has nothing to do with that factual mistake. Even while holding, so I cannot hold that the authorities committed any wrong in granting permission in relation to Survey Nos.23/2/1 and 23/2/2. The basic question would be that if the factual mistake is detected after some time and the same is required to be corrected, then, should such permission be granted in favour of the parties either to amend the original application or to file a fresh application for grant of *post facto* non-agricultural permission and transfer of the property in accordance with the real intention of the parties.

6. On the undisputed facts, it floats on the surface that the intention of the parties was to transfer Survey No.25 and in accordance with the express intention, the application was filed, but, due to some

factual mistake, wrong Survey Numbers were mentioned in the application though a correct plan of the land was attached with it. However and unless the mistake in mentioning the wrong numbers is rectified by the parties to the transaction, nothing can be ordered in favour of the petitioners or in favour of respondent Nos.2 to 4.

7. Taking into consideration the totality of the circumstances, I hereby set aside all the orders passed by the subordinate authorities and grant permission in favour of the petitioners and respondent Nos.2 to 4 to move an application before the Competent Authority for amendment of the application and consequent amendment in the permission for non-agricultural purposes and transfer, or if they desire, they may make a joint application before the authority for rectification of the earlier mistake. If the legal representatives of respondent No.2 and respondent Nos.3 and 4 do not join the petitioners in their application, then, the petitioners independently would have to make such application and if such an application is filed by the petitioners, then, a notice of the application would be issued to respondent No.2 (through legal representatives) and respondent Nos.3 and 4. In case of joint application, the authority shall proceed to hear the matter and pass final order, but, in case of application by the petitioners, a notice would be issued and after seeing that the notices are served, the authority shall proceed in the matter and pass orders. It is expected of the authorities that they would

dispose of the matter within a period of six months from the date of appearance of the petitioners. The petitioners shall appear before the authority on 19th March, 2007. The petition to the extent indicated above is allowed. Rule is made absolute to the aforesaid extent only. No order as to costs.

[R.S.Garg, J.]

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